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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/738,937

12/17/2003

Joseph A. Welzen

9673

24381

7590

02/16/2006

BRANDE AND MCCLEARY
5976 FALLING TREE LANE
ALTA LOMA, CA 91737

EXAMINER

RAMIREZ, RAMON O

ART UNIT

PAPER NUMBER

3632

DATE MAILED: 02/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/738,937	Applicant(s) WELZEN, JOSEPH A.	
	Examiner RAMON O. RAMIREZ	Art Unit 3632	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 31 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see attached paper. (See 37 CFR 1.116 and 41.33(a)).

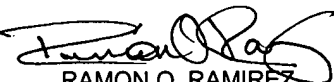
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: 22-27.
 Claim(s) rejected: 1-13, 18-21 and 28-30.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
 13. ☐ Other: _____.


 RAMON O. RAMIREZ
 Primary Examiner
 Art Unit: 3632

Examiner Comments

The proposed amendment filed Jan 31, 2006 cannot be entered since it presents a 112 problem. It is not clear if the bowl is claimed as a positive element of the combination or not. The examiner believes the application can be allowed if claims 31 and 23 were allowed as presented below. The examiner tried to contact the attorney of record yesterday but could not reach him. A message was left in his voice mail. The examiner tried to fax the changes but the attorney fax did not work. Applicant is reminded that an extension of time is required in order to consider an additional amendment.

Examiner Proposed Amendment

31. An adjustable stand assembly, said adjustable stand assembly adapted to mount a workpiece, such as a tree, to stand upright in a vertical orientation, comprising [[:]] a stand assembly, a cover, a bowl and a base; wherein:
- a. ~~a stand assembly~~ [[:]] said stand assembly ~~having~~ has a pot, said pot adapted to be being firmly attached to the base of a tree trunk;
 - b. ~~a cover~~ [[:]] said cover ~~having~~ has a central opening defined therein, said central opening being adapted to receive said pot; said cover has a sloping upper surface, said sloping upper surface terminating into a down and outward slanted lip, thereby making it easier to install said cover snugly over a and enclosing said bowl;

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- c. said pot is circular in cross section and has at least two guide holes defined therein, said guide holes being located towards an upper rim of said pot, said guide holes being positionally opposed to each other, said pot being adapted to attach to the tree by means of a plurality of holding devices, said plurality of holding devices equaling said guide holes defined in said pot, said plurality of holding devices being selected from the group consisting of nails, screws, tapered bolts, pointed or unpointed metal rods;
- d. said plurality of holding devices being guided by said guide holes, into the tree, said guide holes being horizontally aligned[.];
- e. said pot further having a plurality of holes defined therein, said plurality of holes being biased towards a bottom of said pot, whereby said plurality of holes allow water to enter said pot and drain said pot of water when the tree is lifted out of said stand assembly;
- f. said bowl ~~having~~ has a downward curving convex bottom surface, said downward curving convex bottom surface having said cover attached thereon, said bowl additionally having a means of retaining said pot, said bowl further having a downward outer sloping rim, said downward outer sloping rim having adapted to have a snug fit with said down and outward slanted lip of said cover; and
- g. ~~a-base[.],~~ said base ~~having~~ has a downward curving concave top surface defined therein, said downward curving convex surface of said bowl mating with said downward curving concave top surface of said base, said base having a return lip, said return lip being located at an outer edge of said base facilitating moving said stand

assembly with the tree mounted therein, thereby[[:]] and

~~h. said cover is adapted to enclose said bowl.~~

23. The stand assembly of claim 31, wherein;

said cover ~~having a central opening defined therein,~~ said central opening being circular in shape, said cover further having a downward circular sloping surface to accommodate said pot, said pot having sloping sidewalls, said sloping sidewalls having a decreasing circular cross section towards said base of said pot;

said circular sloping surface of said central opening of said cover guides said pot when said pot is placed into said stand assembly;

said lower flange of said central opening of said cover is adapted to hold said pot firmly and accepts side loads from said pot shaped member when the tree is tipped.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RAMON O. RAMIREZ whose telephone number is (571) 272-6821. The examiner can normally be reached on MONDAY-FRIDAY, IST FRIDAY OFF.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT OLSZEWSKI can be reached on (571) 272-6788.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).